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In the Supreme Court of the United States

OCTOBER TERM, 1976

NORTHEAST MARINE TERMINAL COMPANY, INC., AND STATE INSURANCE FUND, PETITIONERS

v.

RALPH CAPUTO AND DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR

INTERNATIONAL TERMINAL OPERATING CO., INC., PETITIONER

v.

CARMELO BLUNDO AND DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT

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No. 76-444

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v.

RALPH CAPUTO AND DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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OPINIONS BELOW

The opinion of the court of appeals (I.T.O. Pet. App. 1a–44a–2)[1] is reported at 544 F. 2d 35. The Bene-

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[1] "I.T.O. Pet. App." refers to the separately bound appendix to the petition in No. 76-454. "Northeast Marine Pet. App." refers to the appendix to the petition in No. 76-444.

fits Review Board's decision in No. 76-444 (Northeast Marine Pet. App. 47a–50a) is reported at 3 BRBS 13.[2] The administrative law judge's decision in that case (Northeast Marine Pet. App. 51a–55a) is not reported; a synopsis of it appears at 2 BRBS 4 (ALJ). The Benefits Review Board's decision in No. 76-454 (I.T.O. Pet. App. 45a–48a) is reported at 2 BRBS 376. The administrative law judge's decision in that case (I.T.O. Pet. App. 49a–59a) is not reported; a synopsis of it appears at 1 BRBS 71 (ALJ).

JURISDICTION

The judgment of the court of appeals (Northeast Marine Pet. App. 56a–58a) was entered on July 1, 1976. A petition for rehearing in No. 76-444 was denied on September 3, 1976 (Northeast Marine Pet. App. 59a–60a). The petition for a writ of certiorari in No. 76-444 was filed on September 27, 1976, and in No. 76-454 on September 28, 1976. The petitions were granted and the cases were consolidated on December 6, 1976. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Longshoremen's and Harbor Workers' Compensation Act applies to persons injured on land while handling cargo, after that cargo has been unloaded from the vessel but before it has

[2] The Benefits Review Board Service, published by Matthew Bender & Co., is the unofficial reporter of the Board's decisions.

been finally received by the consignee for overland carriage.

2. Whether the Act covers injuries occurring within portions of a maritime facility that are not being used for the transfer of cargo between a vessel and the pier or wharf.

STATUTE INVOLVED

1. Prior to its amendment in 1972, the Longshoremen's and Harbor Workers' Compensation Act provided in relevant part:

Section 2(3), 44 Stat. 1425, 33 U.S.C. 902(3):

> The term "employee" does not include a master or member of a crew of any vessel, nor any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

Section 2(4), 44 Stat. 1425, 33 U.S.C. 902(4):

> The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any dry dock).

Section 3(a), 44 Stat. 1426, 33 U.S.C. 903(a):

> Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any dry dock) and if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law. * * *

2. As amended by the Longshoremen's and Harbor Workers' Compensation Act Amendments of 1972, 86

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Stat. 1251 *et seq.*, the Act now provides in relevant part:

Section 2(3), 86 Stat. 1251, 33 U.S.C. (Supp. V) 902(3):

> The term "employee" means any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harborworker including a ship repairman, shipbuilder, and shipbreaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net.

Section 2(4), 86 Stat. 1251, 33 U.S.C. (Supp. V) 902(4):

> The term "employer" means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

Section 3(a), 86 Stat. 1251, 33 U.S.C. (Supp. V) 903(a):

> Compensation shall be payable under this Act in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

STATEMENT

1. Ralph Caputo has been a longshoreman since 1947 (A. 9). He was a member of a regular stevedoring "gang" that worked steadily for Pittston Stevedoring Co.; sometimes Caputo worked as a "dock man" handling cargo on a pier next to a ship, and sometimes he worked as a "hold man" stowing cargo on a vessel or breaking it out of a ship's holds (A. 8–10). When Pittston had no work for Caputo's regular "gang" he went to the waterfront hiring hall, where he was hired by the day (A. 10). On some occasions he was hired by Northeast Stevedore Co. to do work as a member of a stevedore "gang"; on other occasions he was hired by Northeast Marine Terminal Co. for work in its terminal operations. In either case he reported to the same timekeeper at Northeast's terminal (A. 14–16, 22–23).

On April 16, 1973, the hiring hall sent Caputo to Northeast's terminal to work as a "terminal laborer" (A. 14). "Terminal labor" and work in a stevedoring "gang" are the two standard assignments of longshoremen who handle cargo in its movement between a vessel and the pier, and across a pier or terminal to consignees or from shippers.[3] Caputo was assigned to help load consignees' trucks with cargo that had been unloaded from ships at Northeast's terminal. While backing into a consignee's truck with a dolly loaded

[3] Longshoremen less frequently are assigned to the "ship's labor" tasks, which include taking laundry and ships' stores aboard for the crew. Caputo had been assigned such tasks on occasion (A. 8, 24–25).

with cases of cargo that had been discharged from a vessel some five days earlier, Caputo tripped over an obstruction and injured his foot; he was unable to return to work until May 7, 1973 (A. 4–6, 27–29).

The administrative law judge (*Northeast Marine* Pet. App. 51a–55a) and the Benefits Review Board (*id. at* 47a–50a) concluded that Caputo was an "employee" within the meaning of Section 2(3) of the Longshoremen's and Harbor Workers' Compensation Act and held that he was entitled to compensation. Both the administrative law judge and the Board relied on the Board's earlier decision in *Avvento* v. *Hellenic Lines, Ltd.*, 1 BRBS 174.

Avvento held that an employee injured while loading cargo into a consignee's truck was covered by the Act. The Board reasoned that the employee was engaged in maritime employment because he was performing the last of a series of operations necessary to transfer the ship's cargo from its hold to a land carrier; the employee therefore met the "status" test established by Section 2(3) of the Act. The Board also concluded that the employee met the "situs" test established by Section 3(a) of the Act because the injury occurred in a terminal customarily used to unload vessels and to transfer possession of their cargo.

The Board declined the invitation of petitioner Northeast to overrule *Avvento*. It also declined Northeast's request to hold that Caputo's employment had lost its maritime character because the cargo had been

transferred from the vessel to the terminal five days before Caputo loaded it into the consignee's truck (Northeast Marine Pet. App. 48a–49a).

2. Carmelo Blundo worked as a checker for International Terminal Operating Co. (I.T.O.) for five years (A. 60–61). Blundo usually worked at the 21st Street Pier in Brooklyn, New York; the pier extends approximately 700 feet back from the water's edge and is approximately 1000 feet wide (A. 62, 75). It is enclosed by a fence, and two guarded gates control traffic to and fro (A. 63). On the seaward end of the pier there are finger piers, which can accommodate five ships for loading or unloading (A. 64).

The side of the pier closest to 21st Street was used to load and unload ships; the side closest to 19th Street was used to strip containers of cargo that had been transported there after being unloaded from ships at another pier (A. 94–96).[4] Petitioner I.T.O.

[4] Containers are large metal boxes resembling truck trailers but having no wheels (A. 101). They are used to carry large amounts of cargo that otherwise would require strapping to pallets. A container may carry goods for a single consignee, or it may be shared by goods of several consignees; if it carries goods for a single consignee it may be removed from the pier intact in certain circumstances, but if it carries goods for more than one consignee it usually is "stripped" of its contents, and the contents are reassembled by consignee (A. 86–89, 96–98, 102–103, 105–107). Containers may be loaded onto ships (or removed from them) more quickly than break bulk cargo. The secure stowing or breaking out of cargo, formerly performed in the ship's hold, now may be done on shore in stuffing and stripping the containers, so that the time ships spend in port is reduced (I.T.O. Pet. App. 34a–37a). See generally National Association of Stevedores Br. 27–31.

also loaded and unloaded lighters[5] at the 21st Street pier (A. 115).

Blundo, as a checker, performed several types of tasks for petitioner I.T.O. Approximately 20 percent of the time he worked aboard vessels or lighters checking cargo against the manifests or bills of lading (A. 67). Checkers also worked on the pier alongside the water (A. 116) and inside the terminal. Blundo was assigned his tasks at the beginning of each day, and until he arrived at the terminal he did not know which tasks he would perform. He was reassigned during the day if he completed the tasks to which he initially was assigned (A. 68–69, 115–117, 123).

On January 8, 1974, I.T.O. assigned Blundo to check cargo being stripped (removed) from a container on the 19th Street side of the pier, and 30 to 40 feet from the water's edge (A. 65, 69). The cargo was then to be placed in a special warehouse pending customs inspection (A. 69). As he attempted to mark a pallet of cargo being taken from the container, Blundo slipped on ice that had accumulated on the pier (A. 74). He was disabled until April 16, 1974 (A. 59).

The administrative law judge (I.T.O. Pet. App. 49a–59a) and the Benefits Review Board (*id.* at 45a–48a) concluded that Blundo's injury was covered by the Act. The Board held that the stripping of containers on the waterfront is a "longshoring

[5] Lighters are covered barges (A. 8), usually used to transport cargo to and from ships moored in the harbor or in open water.

operation" and a "part of the over-all process of unloading a vessel" (*id.* at 47a); Blundo therefore was injured while engaged in "maritime employment" within the meaning of Section 2(3) of the Act. The Board also held that the entire 21st Street Pier was a "terminal" adjoining the water and customarily used by I.T.O. in the process of loading and unloading vessels (*id.* at 48a); Blundo therefore was injured at a place with the maritime situs required by Section 3(a) of the Act.

3. Petitions for review in both cases were consolidated by the court of appeals, which upheld the awards of compensation (I.T.O. Pet. App. 1a–44a).[6]

The court found "no question that claimants met the situs test" of Section 3(a) (I.T.O. Pet. App. 30a and n. 19), concluding that any pier or terminal next to the water is within the situs definition. The court also held that both Caputo and Blundo were engaged in "maritime employment," within the meaning of Section 2(3), when they were injured (*id.* at 31a–40a).

The court concluded that all persons performing traditional tasks of longshoremen (including stuffing and

[6] The court questioned whether the Director, Office of Workers' Compensation Programs, the federal respondent here, was a proper party in the court of appeals (I.T.O. Pet. App. 12a–14a n. 5). It concluded that some federal participation was proper, however, and therefore did not reach the question whether the Benefits Review Board itself should have been substituted for the Director. Petitioners themselves named the Director rather than the Board as a respondent in the court of appeals, and they have not presented in their petitions for writs of certiorari any question concerning the identity of the proper federal party. The question therefore is not before the Court in this case.

stripping of containers, the functional equivalent of these tasks) are engaged in maritime employment, whether or not the persons are "longshoremen." Because longshoremen traditionally have assembled cargo for shipment and, after cargo is removed from a ship, made it available for consignees, Blundo was covered by the Act. The court thought that Caputo was differently situated, but it upheld the award to him on the ground that he was a "longshoreman" whether or not, at the moment of the injury, he was engaged in traditional longshoring tasks.

In other words, the court of appeals concluded that a person is engaged in "maritime employment" whenever he is employed as a longshoreman (whether or not engaged in longshoring operations) when injured, or when he is engaged in longshoring operations (whether or not a "longshoreman") when injured. The court reserved any questions that might be presented by work other than stuffing, stripping or checking that was seemingly maritime in nature but not performed by a "longshoreman." It summarized its holding as follows (I.T.O. Pet. App. 39a–40a):

> We therefore hold that the Amendments at least cover all persons meeting the situs requirements (1) who are engaged in stripping or stuffing containers or (2) are engaged in the handling of cargo up to the point where the consignee has actually begun its movement from the pier (or in the case of loading, from the time when the consignee [*sic;* consignor] has stopped his vehicle at the pier), provided in the latter instances that the employee has spent a significant part of his time in the typical longshoring activity of taking cargo on or off a vessel. That is as far as we need to go to affirm Blundo's and Caputo's awards; whether the proviso is essential can be left for another day.

SUMMARY OF ARGUMENT

I

All physical cargo handling activity within an area meeting the situs requirement of Section 3(a) of the Act also satisfies the employment status requirement of Section 2(3). The Act therefore covers all persons who remove cargo from a ship, transfer it, check it, load or unload containers, and place cargo in the possession of an overland carrier. Any person who engages in the risky task of cargo handling on the waterfront not only is engaged in longshoring operations within the meaning of Section 2(3), but also is engaged in "maritime employment," whether or not his job properly may be called "longshoreman."

The Act covers persons on the basis of their occupations, not on the basis of what they may be doing when injured. It uses "maritime employment" and "longshoremen" in a broad sense, to include all waterfront tasks related to the transportation of goods by water. This Court has used the term "longshoreman" in the same way (*Victory Carriers, Inc.* v. *Law,* 404 U.S. 202), and other courts also have recognized that longshoring operations include most varieties of physical endeavor involved in moving cargo between land and water transportation.

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Any ambiguity in the statute should be resolved in favor of coverage. The Act is a remedial statute and must be liberally construed (*Voris* v. *Eikel,* 346 U.S. 328, 333). The amendments at issue here were intended to put an end to the phenomenon of shifting coverage that caused waterfront workers to walk in and out of federal coverage from day to day or even within a single day. Although adoption of petitioners' "point of rest" line would end the problem of shifting coverage for some workers, it would create a new problem for others whose daily work carries them from one side of the "point of rest" to the other. The "point of rest" is itself elusive; how long an interruption in the movement of cargo between water and land transportation is enough to make a stopping point a "point of rest?"

The Benefits Review Board has concluded that no meaningful rule can divide the cargo-handling operations of a single waterfront area into covered and uncovered portions. That conclusion is entitled to deference, and the award of benefits in these cases should be upheld.

II

Respondent Blundo was injured at a maritime situs within the meaning of Section 3(a) of the Act. Blundo was injured in a terminal or pier adjoining navigable waters, and that alone is sufficient to establish a maritime situs.

Petitioner I.T.O. would divide a single waterside terminal into a number of areas, some having, and others lacking, the requisite maritime situs. Nothing could be more conducive to confusion. Unless every place within any waterfront facility devoted primarily to maritime activities is treated as a maritime situs for the purpose of Section 3(a), workers would walk in and out of federal coverage repeatedly within a working day. Indeed, even if the worker stayed in the same place, coverage might come and go as the workers around him engaged in different tasks. For example, under the argument of petitioner I.T.O., the place where Blundo was injured might be a maritime situs while a ship is at the pier, then lose that characteristic when the ship leaves.

Every "pier" or "terminal" adjoining the navigable waters is a maritime situs, whether or not the pier or terminal is used to load or unload ships. The requirement that a place be "customarily used by an employer in loading, unloading, repairing, or building a vessel" modifies only the statutory coverage of "other adjoining areas." The court of appeals therefore correctly held (I.T.O. Pet. App. 31a n. 19) that "any pier next to the water is included within the situs definition."

ARGUMENT

I

A PERSON IS ENGAGED IN "MARITIME EMPLOYMENT" WHENEVER HE IS WORKING WITH CARGO AFTER IT HAS BEEN REMOVED FROM A SHIP BUT BEFORE IT IS TRANSFERRED TO AN OVERLAND CARRIER FOR DELIVERY TO THE CONSIGNEE

A. THE STATUTE APPLIES TO ALL EMPLOYEES ENGAGED IN THE PROCESS OF HANDLING CARGO AT THE WATERFRONT

1. The Act distinguishes among different occupations but not among different tasks

The Longshoremen's and Harbor Workers' Compensation Act, as amended in 1972, provides that compensation under the Act shall be paid to all "employees" satisfying the employment "status" test of Section 2(3)[7] who are injured in places that satisfy the maritime "situs" test of Section 3(a).[8]

Section 2(3) provides that a worker is an "employee" satisfying the status test if he is a "person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations * * *." All persons engaged in "maritime employment" are covered. Congress did not leave

[7] Petitioners in No. 76–444 concede that they are "employers" within the meaning of Section 2(4) (Br. 3 n. 2), and petitioner I.T.O. never has disputed this. Their status as "employers" is controlled by whether any of their employees satisfy the status test of Section 2(3).

[8] The situs requirement is discussed at pages 44–49, *infra*.

that ambiguous term as the sole definition of the extent of coverage, however; Section 2(3) provides that any "longshoreman," and any "other person engaged in longshoring operations," are deemed to be engaged in the sort of maritime employment the statute describes.

There are, in other words, three ways for a cargo handler to meet the status test of Section 2(3): (1) he can be a "longshoreman" (whether or not he is engaged in longshoring operations); (2) he can be a person "engaged in longshoring operations" (whether or not he is a longshoreman); or (3) he can satisfy the broader generic description of "maritime employment" (whether or not he is a longshoreman or a person engaged in longshoring operations).[9]

[9] We do not discuss in this brief the other occupations that satisfy the status test. Section 2(3) provides that an employee includes any "harborworker including a ship repairman, shipbuilder, and shipbreaker * * *." The coverage of these occupations is discussed in *Jacksonville Shipyards, Inc.* v. *Perdue*, 539 F. 2d 533 (C.A. 5), petition for a writ of certiorari pending *sub nom. Halter Marine Fabricators, Inc.* v. *Nulty*, No. 76–880, and *Dravo Corp.* v. *Maxin*, 545 F. 2d 374 (C.A. 3), petition for a writ of certiorari pending, No. 76–1093. The Department of Labor believes that all persons within these occupations are covered by the Act, whether or not they are working on the navigable waters when injured.

The fact that "maritime employment" is a catch-all term rather than a limitation upon coverage is demonstrated by the inclusion of "any * * * shipbuilder" within the definition of "employee." Shipbuilding traditionally has not been thought of as maritime employment. *Grant Smith-Porter Ship Co.* v. *Rhode*, 257 U.S. 469. Congress used "maritime employment" in a lay sense, however, and defined its constituent parts in a lay sense as well. The coverage of the Act consequently is far broader than the definition of maritime employment used in the common law of admiralty.

The breadth of these coverage provisions deprives petitioners' arguments of much of their force. Although petitioners present a number of lengthy and complicated contentions, these are not difficult cases. The statute is short, and the pertinent legislative history not only is brief but also is the same in both houses of Congress. These cases are here at all only because the statute uses terms like "maritime employment" and "longshoring operations" that the legislative history does not flesh out.

But any ambiguities, far from favoring petitioners, must be resolved in favor of coverage. The Act "must be liberally construed in conformance with its purpose, and in a way which avoids harsh and incongruous results." *Voris* v. *Eikel,* 346 U.S. 328, 333. "In the application of the act, therefore, the broadest ground it permits of should be taken," *De Bardeleben Coal Corp.* v. *Henderson,* 142 F. 2d 481, 484 (C.A. 5), quoted with approval in *Calbeck* v. *Travelers Insurance Co.,* 370 U.S. 114, 130.

There is a considerable area of agreement among the parties here. All agree that Congress intended to cover some shore-based workers. The petitioners (and the *amici* supporting them) concede that the Act applies to all employees moving cargo between the vessel and the first or last point of rest of that cargo on land, whether or not the employees engaged in that movement are or ever have been on a ship (I.T.O. Br. 9, 18–19, 33–43; Northeast Marine Br. 11–21; National Association of Stevedores Br. 5, 11–31; West Gulf Br.

7–10, 13–14). The respondents agree that the Act's coverage does not begin (when freight is arriving for shipment) until the cargo arrives by overland carrier at a waterfront pier or terminal satisfying the situs requirement of Section 3(a), and that the coverage ends when inbound cargo has been accepted by a consignee for overland carriage. The disagreement here concerns the coverage of employees who work on the waterfront moving, checking, and handling cargo.

The legislative history does not directly address the status of such persons. What little legislative history there is seems to look both ways. Both committee reports (H.R. Rep. No. 92–1441, 92d Cong., 2d Sess. 10–11 (1972); S. Rep. No. 92–1125, 92d Cong., 2d Sess. 13 (1972))[10] recite that "[t]he intent of the Committee is to permit a uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their activity." This implies that what the employee was doing at the moment of injury is irrelevant to coverage, contrary to petitioners' arguments; it also seems to imply, however, that only persons who might have been covered for part of their activity before the 1972 amendments will be covered (for all of their activity) under the amended Act.

The committee reports state that "with the advent of modern cargo-handling techniques, such as con-

[10] The most pertinent portion of the committee reports is set out at Northeast Marine Br. App. ii–v.

tainerization and the use of LASH-type vessels, more of the longshoreman's work is performed on land than heretofore." H.R. Rep. No. 92–1441, *supra,* at 10; S. Rep. No. 92–1125, *supra,* at 13. This implies that the Act covers all of the physical tasks involved in unloading containers and transferring their contents to other modes of transportation, tasks that formerly were carried out in part aboard ship and in part close to the water; the Act therefore would cover workers like Blundo and Caputo.

This impression is fortified by the remark that "checkers, for example, who are directly involved in the loading or unloading functions are covered by the new amendment." As we read this passage, the committees are stating that all checkers are "directly involved in the loading or unloading functions" at least some of the time and are consequently covered by the Act for all of their employment. Yet the committees also wrote that "employees whose responsibility is only to pick up stored cargo for further trans-shipment would not be covered * * *." Does this mean, as petitioners contend, that persons who pick up cargo from the first point of rest for further movement are not covered? Or does it mean, as the Benefits Review Board concluded in these cases and many others, only that persons who pick up cargo from the marine terminal or the harborside for land transportation are not covered?

Professors Gilmore and Black have concluded that "[t]he Reports do not read as if they had been divinely inspired. As essays in statutory construction,

they do not commend themselves." [11] We agree that the legislative history is not radiantly clear. Although we have cited passages that appear to support the position of the Benefits Review Board and the Director in these cases, petitioners have construed them, and similar passages, to support their own position.[12] The

[11] Gilmore and Black, *The Law of Admiralty* 430 (2d ed. 1975).

[12] The committee reports set out a "typical example" of the shoreside work that would be covered by the amended Act. S. Rep. No. 92–1125, *supra*, at 13; H.R. Rep. No. 92–1441, *supra*, at 11; Northeast Marine Br. App. iv–v. Petitioners argue that this example demonstrates that the Act covers only those longshoremen and other persons involved in the handling of cargo between the ship and the first (or last) "point of rest" (Northeast Marine Br. 12–13; I.T.O. Br. 21–22; National Association of Stevedores Br. 9–10). We submit, however, that the "typical example" stands for the following propositions: (1) all persons engaged in the immediate transfer of cargo between the ship and a storage or holding area on the pier are covered; (2) persons are not covered just because they are injured in an area adjoining the navigable waters; (3) employees whose only responsibility is to pick up cargo for further shipment by land transportation are not covered; (4) purely clerical employees are not covered; and (5) checkers, who are directly involved in loading and unloading functions, are covered. The "typical example" does not support the narrow reading of Section 2(3) proposed by petitioners.

Petitioners read the reference to "employees whose responsibility is only to pick up stored cargo" to include longshoremen who are assigned to handle cargo shoreward of the "point of rest." This is a strained reading. The committees used "pick up" as an antonym to "deliver," not as an antonym to "put down." This is thus only a reference to the fact that the Act does not cover, for example, a truck driver whose presence at the pier or terminal is only for the purpose of picking up (or delivering) cargo.

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statute, however, must be read not only in light of its ambivalent legislative history but also in light of the reasons that prompted Congress to enact it, and in light of the consequences that would follow from adoption of petitioners' interpretation. We submit that there is ample support for the reasoned interpretation of the Act that has been adopted by the Benefits Review Board and the Director of the Office of Workers' Compensation Programs.

The position of the Board and the Director is that all physical cargo handling activity anywhere within an area meeting the situs requirements of Section 3(a) is "maritime employment" within the meaning of Section 2(3). The Act covers all persons who remove cargo from a ship, transfer it, check it, load or unload containers, and place cargo in the possession of a consignee (or the consignee's agent) for overland carriage. When cargo is arriving at the waterfront, the same principles apply; once the cargo has left the possession of the overland transporter, the Act covers all subsequent cargo handling activities until the cargo is safely aboard ship. Any person who participates in the risky task of cargo handling on the waterfront not only is engaged in longshoring operations, but also is engaged in maritime employment whether or not his job may properly be called "longshoreman" or his duties "longshoring operations." The Board, at the urging of the Director, has consistently taken this position since it was created by the 1972 amendments.[13]

[13] In addition to *Avvento*, *supra*, and the two cases here, see the Board decisions collected at I.T.O. Br. 40 n. 49. Decisions of the Board with respect to the coverage of persons similarly situated to Blundo and Caputo have been upheld by several courts of appeals. See note 15, *infra*.

The basic design of the 1972 amendments to the Act is clear. Congress intended to provide constant coverage, throughout the course of their employment, to workers whose occupations are "maritime" in the general sense that they are part of amphibious industries. With the single exception of the coverage of an "other person engaged in longshoring operations," Section 2 (3) includes workers on the basis of their occupations, not on the basis of the tasks they may be performing when injured.

"Maritime employment," "longshoreman," "shipbuilder," and so on define careers in which a worker may engage. A maritime worker therefore is covered by the Act as long as he is within the scope of his employment in that occupation, performing any of its tasks. In short, statutory coverage turns upon what the worker is, not upon what he is doing at the moment of injury.

Caputo was a typical longshoreman. He had been one for 26 years and worked in all of the categories of duties on the New York waterfront (see pages 5–6, *supra*). On the day of his injury he was on the waterfront, handling cargo that had been discharged from a vessel, making that cargo available for overland transportation. Blundo was a "checker," an occupa-

tion closely associated with that of longshoreman."[14] He worked alongside longshoremen; on the day of his injury, he was part of a crew removing cargo from a recently-arrived container.

Neither Blundo nor Caputo knew when he left for work in the morning whether he would be assigned to work aboard a ship or at shipside, or handling cargo inside the terminal. They knew only that their duties would pertain to the transfer of cargo between land transportation and a ship. They could be assigned by employers to a broad variety of waterfront tasks. What task they would be doing when injured was no less fortuitous, from their points of view, than whether they would be assigned to work on ships or ashore. The transfer of cargo between land and water transportation was the staple work of their occupations, and they were injured while taking part in that process. That is enough.

Blundo and Caputo either were "longshoremen" by occupation or were engaged in a continuous process of longshoring operations on the waterfront. Since both Blundo and Caputo are covered by the express terms of Section 2(3), it is unnecessary to consider whether

[14] Indeed, at the hearing before the administrative law judge, counsel for I.T.O. referred to the workers stripping containers as Blundo's "fellow longshoremen" (A. 88), and I.T.O.'s witness agreed that its workers engaged in stripping containers and loading cargo onto consignees' trucks were longshoremen (A. 112). Moreover, petitioner Northeast Marine has taken a position under which Blundo is a covered longshoreman (Br. 14–21).

they would satisfy the broader test of "maritime employment."[15]

[15] Scholars of the subject have, without exception, concluded that the Act's coverage is at least as broad as the Board has interpreted it to be. 1A *Benedict on Admiralty* §§ 16–19 (Jhirad rev. 1973); 4 Larson, *The Law of Workmen's Compensation* §§ 89.42–89.43 (1976); Watson, *Broadened Coverage Under the LHWCA*, 33 La. L. Rev. 683 (1973). Gilmore and Black have urged an even broader interpretation, under which "[t]he new statutory language can reasonably be read to mean that all persons who suffer employment-related injuries within the Act's expanded territorial limits are covered" (Gilmore and Black, *supra*, at 429; see also *id.* at §§ 6–45 to 6–51).

The courts of appeals, too, have endorsed the Board's test, although with differences in emphasis. The court of appeals in the instant case thought it unnecessary to consider whether an employee would be covered if he never had worked aboard a vessel.

The First Circuit, in *Stockman* v. *John T. Clark & Son of Boston, Inc.*, 539 F. 2d 264, petition for a writ of certiorari pending, No. 76–571, endorsed the Board's view in the context of an injury to a terminal worker who was "stripping" a container. It stated that "[m]uch of the loading and unloading that used to take place on or alongside the ship is presumably now reflected in the stuffing and stripping of containers" (539 F. 2d at 272), and it concluded that such cargo handling therefore must be taken as longshore work for the purpose of the statute. It rejected (*id.* at 274) the argument that coverage depends upon what the worker is doing at the moment of injury, and it held (*id.* at 277) that Congress did not exclude longshoremen from coverage just because their duties did not take them aboard ship.

The Third Circuit, in *Sea-Land Service, Inc.* v. *Director*, 540 F. 2d 629, took a different approach. It first analyzed the limits of the admiralty jurisdiction (540 F. 2d at 635–638) and concluded that Congress meant to exercise its full constitutional authority. It then stated that the "dominant purpose" of the 1972 amendments "was to make more uniform the death and disability compensation system for maritime employees so that maritime workers would no longer walk into federal coverage and out of state coverage, and vice versa, in the course of a day's work" (*id.*

(Continued)

2. *"Maritime employment" includes all physical tasks required to transfer cargo between land and water transportation*

Petitioner I.T.O. contends that Congress meant to cover only employment that was maritime in the sense

(Continued)

at 637). The court held that coverage should extend to all injuries arising out of commerce connected with vessels (*id.* at 638). See also *Maher Terminals, Inc.* v. *Farrell*, C.A. 3, No. 76-1145, decided January 17, 1977, slip op. 2 (coverage of the Act extends to all employees handling cargo "(1) after its delivery from another mode of transportation for the purpose of loading it aboard a vessel or (2) while it is in the process of being discharged from a vessel and before its delivery to the place where the next mode of transportation will pick it up"); *J. A. McCarthy, Inc.* v. *Bradshaw*, C.A. 3, Nos. 76-1146 *et al.*, decided January 4, 1977, affirming summarily *Bradshaw* v. *J. A. McCarthy, Inc.*, 3 BRBS 195 (terminal forklift maintenance mechanic), *Lind* v. *Independent Pier Co.*, 3 BRBS 232 (checker tallying export cargo being loaded aboard truck for transfer to another pier), *Parks* v. *Lavino Shipping Co.*, 3 BRBS 236 (checker tallying cargo in preparation for delivery to consignee), *Fairman* v. *J. A. McCarthy, Inc.*, 3 BRBS 239 (cooper repairing torn import cargo bags), *Muldowney* v. *Lavino Shipping Co.*, 3 BRBS 229 (checker "spotting" locations of cargo containers), and *Cabrera* v. *Maher Terminals, Inc.*, 3 BRBS 297 ("terminal labor" longshoreman loading imported cargo into consignee's truck).

The Fifth Circuit, in *Jacksonville Shipyards, Inc.* v. *Perdue*, 539 F.2d 533, petitions for writs of certiorari pending *sub nom. P.C. Pfeiffer Co.* v. *Ford*, No. 76-641, *Halter Marine Fabricators, Inc.* v. *Nulty*, No. 76-880, and *Director* v. *Jacksonville Shipyards, Inc.*, No. 76-1166, has adopted the Board's position in most aspects. It concluded that a worker is a covered employee if he is engaged in any part of the cargo handling process up to the point where the cargo leaves a marine terminal. Under its views, Blundo and Caputo would be covered without regard to whether they ever had gone aboard ships. The Fifth Circuit held, however, that the workers must be engaged in the specified activity at the moment of injury (539 F.2d at 539-540), thereby adding one test to those adopted by the Board. The moment-of-injury test adopted by the

that the workers would pass back and forth between land and water.[16] We submit, to the contrary, that Congress used "maritime employment" in a far broader sense, to include all physical tasks performed on the waterfront, and particularly those tasks necessary to transfer cargo between land and water transportation. This is demonstrated by Congress' specific inclusion of "longshoremen" among those occupations to be covered by the Act; longshoremen traditionally have performed many tasks that do not require them to shuttle between land and water.[17] Congress knew this, and it used the term "longshoremen" to include

Fifth Circuit would not affect the disposition of the present cases, however, because Blundo and Caputo were engaged at the moment of injury in covered activities. See pages 36-42, *infra*.

The Fourth Circuit is badly divided. In *I.T.O. Corp. of Baltimore* v. *Benefits Review Board*, 529 F.2d 1080, modified on rehearing *en banc*, 542 F.2d 903, petitions for writs of certiorari pending *sub nom. Maritime Terminals, Inc.* v. *Brown*, No. 76-706, and *Adkins* v. *I.T.O. Corp. of Baltimore*, No. 76-730, a divided panel initially adopted a "point of rest" test under which the Act's coverage extended to cargo handling (on land or water) only during the movement between the vessel and the first (or last) "point of rest" on land. It made no difference whether the worker shuttled back and forth to a ship. On rehearing *en banc*, however, two judges adopted the Board's position, three judges adopted the "point of rest" test, and the sixth judge concluded that the Act covers certain cargo handling, within the terminal, shoreside of the point of rest. Thus, the court held four to two that a worker situated similarly to Caputo is not covered, and an equally divided court upheld awards of compensation to workers situated similarly to Blundo.

[16] See also West Gulf Br. 9-20.

[17] It is demonstrated, as well, by Congress' inclusion in the list of "maritime employment" of occupations that, at common law, would not have been maritime. See note 9, *supra*.

all workers employed at a waterfront facility handling and processing water-borne cargo.

Southern Pacific Co. v. *Jensen,* 244 U.S. 205, struck down an attempt by New York State to apply its workers' compensation program to longshoremen injured during their employment, where the injury took place on the navigable waters. The state statute involved in *Jensen* provided compensation for workers engaged in—

> [l]ongshore work, including the loading or unloading of cargoes or parts of cargoes of grain, coal, ore, freight, general merchandise, lumber or other products or materials, *or moving or handling the same on any dock, platform or place, or in any warehouse or other place of storage.*

New York Laws of 1914, c. 41, § 2(10); emphasis added. This statute illustrates that the Board's interpretation of Section 2(3) is part of a long history of broad definitions of longshoring work in workers' compensation programs.

Such a conception of the work of the longshoreman was shared by Congress at the outset of the process that led to the passage of the Longshoremen's and Harbor Workers' Compensation Act in 1927. Congress originally attempted to authorize States to extend their own statutes to apply to maritime accidents, a

course it selected in part because (H.R. Rep. No. 639, 67th Cong., 2d Sess. 2 (1922); emphasis added):[18]

> The work of longshoremen is not all on ship. Much of it is on the wharves. They may be at one moment unloading a dray or a railroad car or moving articles from one point on the dock to another, the next actually engaged in the process of loading or unloading cargo. *Their need for uniformity is one law to cover their whole employment, whether directly part of the process of loading or unloading a ship or not.*

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[18] This report accompanied the bill that was eventually enacted as the Act of June 10, 1922, 42 Stat. 634, and held unconstitutional in *Washington* v. *W. C. Dawson & Co.*, 264 U.S. 219. See also Hearings on S. 3170 before a Subcommittee of the Senate Committee on the Judiciary, 69th Cong., 1st Sess. 40 (1927) (Statement of L. B. Clark, United States Bureau of Labor Statistics): "[T]he original endeavor in amending the judiciary act was to give the States control of the whole situation, the whole contract—the man on the dock, the man on the ship, the man on the bridge, or on the ladder or hanging in between."

As Judge Prettyman observed in *American President Lines, Ltd.* v. *Federal Maritime Board*, 317 F. 2d 887, 889 (C.A.D.C.), a maritime cargo carrier is obligated—as are the master stevedores and terminal operators who contract with such carriers—to put "the cargo on the dock, reasonably accessible, properly segregated and marked * * *." In order to carry out this obligation, longshoremen are employed in a variety of tasks, which are illustrated in the instant cases. Petitioner Northeast Marine agrees with this analysis (see, *e.g.*, Br. 18–19), and under Northeast's analysis respondent Blundo would be covered by Section 2(3).

Recent judicial decisions, too, have recognized that the traditional work of longshoremen may involve more than the simple loading or unloading of ships.[19] See *International Container Transport Corp.* v. *New York Shipping Association,* 426 F. 2d 884, 886 (C.A. 2):

> Historically the work of longshoremen included the preparation of cargo for shipment by making up, for example, drafts and pallets and, in connection with unloading cargo, the breaking up of drafts and pallets, sorting the cargo according to its consignees and delivering it to the trucks or other carriers.

The work of stuffing and stripping containers has replaced the work of making up and breaking up of pallets and drafts; it therefore was reasonable for the Board to conclude that this work is a maritime activity.

Petitioners would read "longshoremen" and "maritime employment" in the most narrow conceivable way. There is no reason to do so. Congress passed the 1972 amendments to expand the categories of persons

[19] In cases arising under the National Labor Relations Act courts have recognized that the traditional work of longshoremen includes stuffing and stripping of containers at the waterfront (although it does not include such work performed elsewhere). See *International Longshoremen's Association* v. *National Labor Relations Board*, 537 F. 2d 706 (C.A. 2), certiorari denied, January 10, 1977 (No. 76–570). See also *Humphrey* v. *International Longshoremen's Association*, C.A. 4, No. 75–2281, decided January 20, 1977, vacating 401 F. Supp. 1401 (E.D. Va.). Cf. Case Comment, *Work Recapture Agreements and Secondary Boycotts*, 90 Harv. L. Rev. 815 (1977) (discussing the extent to which longshoremen properly argue that stuffing and stripping of containers is their traditional work).

covered and to increase the benefits payable to waterfront workers. "The principal purpose" of the amendments was "to upgrade the benefits [and] extend coverage to protect additional workers." S. Rep. No. 92–1125, *supra,* at 1. To the same effect are *id.* at 12–13, and H.R. Rep. No. 92–1441, *supra,* at 1, 10.[20]

Congress desired to provide a uniform program of coverage at adequate rates to waterfront workers. Petitioners' construction of the Act, however, would relegate many waterfront workers to the inadequacies of the state compensation systems that Congress criticized. The statute therefore should be construed in a

[20] Because the 1972 amendments were designed to preserve the Act's existing coverage and to extend coverage to other workers as well, *Weyerhaeuser Co.* v. *Gilmore*, 528 F. 2d 957 (C.A. 9), certiorari denied, October 4, 1976 (No. 75–1620), upon which petitioners rely, was wrongly decided. The Ninth Circuit held in *Gilmore* that a worker injured while performing tasks upon the navigable waters is not covered by the Act, if those tasks do not relate to navigation. This decision would terminate the coverage of persons who were covered under this Court's interpretation of the original Act; the Court had held that all injuries on the navigable waters were covered, whether or not the worker was engaged in tasks related to navigation. See *Calbeck* v. *Travelers Insurance Co.*, *supra.* Nothing in the Act or its legislative history indicates that Congress intended to withdraw coverage from previously-covered workers or to adopt, in effect, a statutory version of the "maritime but local" test that had hectored the courts for decades and had led to the interminable litigation discussed in *Calbeck* and *Davis* v. *Department of Labor*, 317 U.S. 249, 253–257. See also pages 30–42, *infra.*

way that reaches all workers that Congress reasonably may have considered to be "longshoremen." [21]

B. ANY AMBIGUITY IN THE STATUTE SHOULD BE RESOLVED IN FAVOR OF COVERAGE

To the extent there is ambiguity in the 1972 amendments, it should be resolved in favor of coverage. Three principles support such a construction of the statute. The first, derived from the fact that the Act is a remedial statute to be liberally construed, has been discussed at page 16, *supra*. The other two are discussed below.

1. The Act should be construed to avoid the phenomenon of shifting coverage

The proper interpretation of the 1972 amendments to the Act depends, in part, upon the circumstances that brought about those amendments. The history of workers' compensation for waterfront workers is a history of shifting coverage, of constitutional uncertainties, and of repeated attempts by both Congress and this Court to produce a reasonably uniform system of compensation. Although that history does not entirely determine the meaning of the 1972 amendments, it provides substantial support for the Board's interpretation of them.

[21] This Court has referred to workers shoreward of the first or last "point of rest" of cargo as "longshoremen." For example, in *Victory Carriers, Inc.* v. *Law*, 404 U.S. 202, the Court recognized that "longshoremen" do more than the immediate loading and unloading of ships. 404 U.S. at 212–213. There is no reason to conclude that Congress used "longshoremen" in the 1972 amendments in a narrower sense.

In 1917 this Court held that state workers' compensation statutes could not constitutionally reach injuries sustained on the navigable waters in the course of maritime employment. *Southern Pacific Co.* v. *Jensen, supra.* In the wake of *Jensen* Congress twice authorized States to apply their compensation programs to such injuries, renouncing any interest in national uniformity; this Court twice held such authorizations unconstitutional as impairments of uniformity. *Knickerbocker Ice Co.* v. *Stewart,* 253 U.S. 149; *Washington* v. *W. C. Dawson & Co.,* 264 U.S. 219.

Although the Court continued to strike down state attempts to provide compensation for maritime injuries concerning which the Constitution required uniformity, the Court began to uphold state compensation for injuries on the navigable waters but touching on subjects of primarily local concern. The Court thus upheld an award of workers' compensation to a person injured while building a vessel (*Grant Smith-Porter Ship Co.* v. *Rhode,* 257 U.S. 469), although it disallowed an award to persons injured while painting or repairing completed vessels (*John Baizley Iron Works* v. *Span,* 281 U.S. 222; *Robins Dry Dock & Repair Co.* v. *Dahl,* 266 U.S. 449). The Court upheld an admiralty award based on a state statute for the wrongful death of a longshoreman injured in the hold of a vessel (*Western Fuel Co.* v. *Garcia,* 257 U.S. 233), but it disallowed a workers' compensation award for the wrongful death of a similarly situated longshoreman (*Washington* v. *W. C. Dawson & Co.,*

supra). It upheld an award to a longshoreman knocked from a pier to the water (*T. Smith & Son, Inc.* v. *Taylor,* 276 U.S. 179), but it disallowed an award to a longshoreman knocked from a vessel to the pier (*Minnie* v. *Port Huron Terminal Co.,* 295 U.S. 647).

The situation was chaotic at best.[22] Injured longshoremen did not know where to seek relief, and any attempt to obtain compensation might provoke years of litigation.

Congress provided a palliative by enacting the Longshoremen's Act in 1927. The solution was only partial, however, because Congress still desired to defer to state compensation systems, and Section 3(a) of the 1927 Act appeared to provide that the federal statute would not apply to injuries covered by state statutes. This seemed to incorporate the "maritime but local" distinction, under which the Court was allowing state remedies to apply to some injuries on navigable waters, within the terms of the statute; courts began to hold that the 1927 Act statutorily recreated the "maritime but local" test, so that every

[22] For other cases holding that the federal remedies were exclusive, see, *e.g., Great Lakes Dredge & Dock Co.* v. *Kierejewski,* 261 U.S. 479 (repair on boiler of scow moored in navigable waters); *Gonsalves* v. *Morse Dry Dock & Repair Co.,* 266 U.S. 171 (repair of shell plates on steamer in floating drydock). For cases holding that the States may supply a remedy, see, *e.g., State Industrial Commission* v. *Nordenholt Corp.,* 259 U.S. 263 (longshoreman injured on the pier); *Millers' Indemnity Underwriters* v. *Braud,* 270 U.S. 59 (diver injured while submerged sawing timbers that were blocking navigation); *Sultan Ry. & Timber Co.* v. *Department of Labor,* 277 U.S. 135 (workers injured while directing floating logs toward sawmill).

workers' compensation case presented a question of constitutional law. See, *e.g., Massman Construction Co.* v. *Bassett,* 30 F. Supp, 813 (E.D. Mo.), vacated for lack of jurisdiction, 120 F.2d 230 (C.A. 8), certiorari denied, 314 U.S. 648; *Alaska Packers Association* v. *Marshall,* 95 F.2d 279 (C.A. 9).

This left the relationship between federal and state statutes "shrouded in impenetrable confusion. * * * Indeed, decade by decade, things seemed to get worse—from the point of view of judges and lawyers, from the point of view of the unhappy state and federal officials who had to administer overlapping compensation systems and most of all from the point of view of maritime workers who suffered injury or death in the course of their employment." Gilmore and Black, *supra,* at 409. This Court eased some of the problems by creating a "twilight zone" in which both state and federal compensation systems could apply. *Parker* v. *Motor Boat Sales, Inc.,* 314 U.S. 244; *Davis* v. *Department of Labor,* 317 U.S. 249. This, too, was far from satisfactory, as the dispute about the boundaries of the "twilight zone" replaced the dispute about the reach of the "maritime but local" exception to the *Jensen* principle.[23]

This Court brought an end to much of the confusion and litigation in *Calbeck* v. *Travelers Insurance Co., supra. Calbeck* held that the Act applies to all injuries on the navigable waters, whether or not States consti-

[23] See, *e.g., Bethlehem Steel Co.* v. *Moores,* 335 U.S. 874; *Baskin* v. *Industrial Accident Commission,* 338 U.S. 854.

tutionally could apply their compensation statutes to such injuries under the "maritime but local" and "twilight zone" cases. The other side of the coin was decided in *Nacirema Operating Co.* v. *Johnson,* 396 U.S. 212, which sustained the administrative decision that the 1927 Act had no application to injuries occurring on the pier. *Nacirema* held that the 1927 Act created a test exclusively concerned with situs; although the Act applied to all injuries on the navigable waters, it applied to none on land (396 U.S. at 215–218). The Court explained (*id.* at 223–224):

> There is much to be said for uniform treatment of longshoremen injured while loading or unloading a ship. But even construing the Extension [of Admiralty] Act to amend the Longshoremen's Act would not effect this result, since longshoremen injured on a pier by pier-based equipment would still remain outside the Act. And construing the Longshoremen's Act to coincide with the limits of admiralty jurisdiction—whatever they may be and however they may change—simply replaces one line with another whose uncertain contours can only perpetuate on the landward side of the *Jensen* line, the same confusion that previously existed on the seaward side. While we have no doubt that Congress had the power to choose either of these paths in defining the coverage of its compensation remedy, the plain fact is that it chose instead the line in *Jensen* separating water from land at the edge of the pier. The invitation to move that line landward must be addressed to Congress, not to this Court.

The suggestion was reiterated in *Victory Carriers, Inc.* v. *Law*, 404 U.S. 202, which held that a longshoreman injured by a pier-based forklift may not recover under a warranty of seaworthiness. The Court emphasized the sturdiness of the *Jensen* line in the absence of statutory alteration; it observed, however, that "if denying federal remedies to longshoremen injured on land is intolerable, Congress has ample power under Arts. I and III of the Constitution to enact a suitable solution" (404 U.S. at 216; footnote omitted).

Eleven months after the decision in *Victory Carriers*, Congress amended the Longshoremen's Act to provide compensation for injuries on land.[24] The 1972 amendments were intended to create a uniform and adequate system of workers' compensation for work-

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[24] Petitioners have not argued that this extension exceeds Congress' admiralty powers, nor would such an argument be tenable. The court of appeals rejected it (I.T.O. Pet. App. 40a–42a), as has every other court to consider a similar argument. See *Sea-Land Service, Inc.* v. *Director*, *supra*, 540 F. 2d at 635–638; *Jacksonville Shipyards, Inc.* v. *Perdue*, *supra*, 539 F. 2d at 544–546; *Dravo Corp.* v. *Maxin*, *supra*, 545 F. 2d at 377–379 and n. 4. This Court already has indicated in the passages from *Nacirema* and *Victory Carriers* quoted in the text that Congress may provide compensation for injuries occurring on the waterfront, and many cases have sustained earlier extensions of admiralty jurisdiction. See *The Genesee Chief*, 12 How. 443; *Richardson* v. *Harmon*, 222 U.S. 96; *Piedmont & Georges Creek Coal Co.* v. *Seaboard Fisheries Co.*, 254 U.S. 1; *Detroit Trust Co.* v. *The Thomas Barlum*, 293 U.S. 21; *Panama R.R.* v. *Johnson*, 264 U.S. 375, 386. The Court upheld the 1927 Act under the admiralty power of Congress (*Crowell* v. *Benson*, 285 U.S. 22, 41), and the 1972 amendments are constitutional as well. See also *United States* v. *Webb, Inc.*, 397 U.S. 179, 191; *The Lottawana*, 21 Wall. 558, 576.

ers in waterfront industries, throughout the course of their occupations. Congress desired to eliminate the arbitrary lines that separated those waterfront workers covered by the federal program from those covered by less adequate state programs. It would be ironic if the provisions enacted to accomplish that objective not only failed to do so but also recreated the difficulties of prediction and determination that the Court so lately (and after such labors) had ameliorated. The amendments should be interpreted in light of their goal of comprehensive coverage, and in light of the problems out of which they arose.

If anything is clear from the legislative history of the 1972 amendments, it is that Congress did not want to resurrect the phenomenon of shifting coverage that had been produced by *Jensen*, the "maritime but local" cases, and *Nacirema*. Both committees stated (S. Rep. No. 92–1125, *supra*, at 12–13; H.R. Rep. No. 92–1441, *supra*, at 10–11; Northeast Marine Br. App. ii–iv) that the "coverage of the present Act stops at the water's edge * * *. The result is a disparity in benefits payable for death or disability for the same type of injury depending on which side of the water's edge and in which State the accident occurs. To make matters worse, most State Workmen's Compensation laws provide benefits which are inadequate * * *. * * * The Committee believes that the compensation payable to a longshoreman or a ship repairman or builder should not depend on the fortuitous circumstance of whether the injury occurred on land or over

water. * * * The intent of the Committee is to permit a uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their activity."

Although adoption of petitioners' "point of rest" line would end the problem of shifting coverage for some workers, it would create a new problem for other waterfront workers whose daily work carries them from one side of the "point of rest" to another. It would, in other words, create a new *Jensen* line and perpetuate the kind of uncertainty Congress attempted to eliminate.[25]

Petitioners' argument that the first or last "point of rest" of cargo determines the scope of the Act's coverage finds no support in the language of the Act. Petitioners contend that the "point of rest" is well known in the trade and is easily located. But if this

[25] The worker assigned to do work shoreward of the first or last "point of rest" of the cargo still may be required, in the course of a day's work, to cross that line. Moreover, there would be substantial shifts in coverage for terminal laborers whose duties required them to discharge or load barges and lighters. Workers like Caputo, in the "terminal labor" category for the day, perform the amphibious work of loading and unloading such craft; this work is fully interchangeable with other terminal labor work not only on a daily basis but also on the same day. Caputo testified that he had done such tasks while working for Northeast in the "terminal labor" category, and that he could have been assigned to such amphibious tasks upon completion of the delivery of cargo that led to his injury (A. 8–9, 24–26). Similarly, the record establishes that workers in Blundo's classification work aboard vessels and at the water's edge, seaward of the point of rest, on many occasions (A. 67–69, 115–117, 123). Nothing in the concept of a "point of rest" line eliminates or even ameliorates the problem of shifting coverage.

is so, then it is odd that "point of rest" is not mentioned anywhere in the legislative history of the 1972 amendments, much less in the Act itself. If the line were so well understood, and were to be incorporated into the meaning of the statute, surely some committee or Member of Congress would have said so; none did.

The "point of rest" test would not produce uniform coverage; as workers crossed the "point of rest" from day to day, or even time to time during the day, they would shift in and out of the Act's coverage—the very evil Congress intended to eliminate.[26] Worse still, the "point of rest" can be a vague concept, changing (as the *amici* supporting petitioners discuss) from port to port. Different ports have different systems of handling cargo; sometimes different terminals within the same port use different systems.

[26] The First Circuit has remarked, in agreement with the court of appeals in the instant cases (I.T.O. Pet. App. 35a–39a), that the "point of rest" test "does not seem compatible with the 'uniformity' of coverage Congress was seeking." *Stockman* v. *John T. Clark & Son of Boston, Inc.*, *supra*, 539 F. 2d at 275.

See also *Jacksonville Shipyards, Inc.* v. *Perdue*, *supra*, 539 F. 2d at 543, which points out that, in addition to the reasons given in the text for rejecting the "point of rest" theory, the adoption of a point of rest line would create injustice. There, as here, "[p]etitioners apparently concede that [the workers] would be covered if [their] work were part of a continuous operation which began with the cargo's departure from a ship's hold. As respondents correctly point out, we are being asked to deny coverage purely because of a discontinuity in time created by the cargo's having been stored for a while along the shore." That line, the court of appeals concluded, was arbitrary and unjust because it would make a worker's coverage turn not upon what he was doing, but upon what other workers had done or not done in conveying the cargo to him for further handling.

The *amicus* brief of West Gulf Maritime Association points out (pages 3–9) that the process in every port requires a movement of cargo from point A (the ship) to point C (land transportation). Although there may be a point B (the first or last "point of rest") in between, it is an arbitrary construct. The functions performed in the terminal do not depend upon the location of the "point of rest," or even whether there is a "point of rest"—yet petitioners would give this point dispositive weight. Congress would not lightly have chosen this line, with its potential for ambiguous and shifting coverage, and it is hard to believe that it would have done so without some indication in the legislative history that this was intended.[27]

[27] Petitioners and the *amici* supporting them contend that the first or last "point of rest" is well known in each port, and that using it as a dividing line will not cause uncertain coverage. But the only useful definition of a "point of rest" is a break in the more or less continuous flow of movement of cargo across the pier. Each piece of cargo may move several times during this flow, including, as petitioners and the *amici* agree, several times before reaching the first "point of rest" after discharge from a vessel. If that is so, how long does the interruption in movement need to be to make a stopping place a "point of rest"? How, if at all, does the "point of rest" theory apply to bulk shipments of coal, oil or grain? Goods shipped in bulk may cross the pier in a continuous motion or may have several brief resting places. The definitions of the "point of rest" offered by the associations of stevedores are riddled with vague terms. See National Association of Stevedores Br. 13, 24–25. Similar ambiguities confronted the Court in *Victory Carriers*, leading it to remark that the "attempt to define the process of 'loading' * * * has produced substantial confusion in the lower courts; the cases are impossible to rationalize" (404 U.S.

The "duties-at-the-moment-of-injury" test, which petitioners also advocate, is equally inconsistent with the goal of eliminating shifting coverage.[28] Such a test would cause coverage of typical workers to shift from federal to state law, and back again, from moment to moment within a single working day. A longshoreman injured on a ship would be uncovered by the federal statute, under petitioners' arguments, if he took a few moments off to use the ship's head.

Although, as the Court held in *Parker* v. *Motor Boat Sales, Inc.*, *supra*, 314 U.S. at 247, the habitual performance of non-maritime duties does not make the Act inapplicable to a maritime injury, this does not mean (as petitioners apparently contend) that a worker's duties at the moment of injury are the only permissible consideration under the 1972 amendments. "The result of [petitioners'] interpretation would be to subject the scope of protection that Congress wished to provide, to uncertainties Congress wished to avoid" (*id.* at 250). A worker covered by the Act for any part of his duties therefore should be covered for all of them, when the injury takes place within a maritime situs specified by Section 3(a).

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at 214 n. 14). The Court therefore concluded that any rule of general applicability should strive to "decreas[e] the arbitrariness and uncertainties surrounding amorphous definitions of 'loading.' Such uncertainties may prejudice both the longshoreman and the employer" (*ibid.*). This principle calls for the rejection of petitioners' attempt to make the "point of rest" the determinant of coverage under the Act. No meaningful and certain rule can divide a single waterfront area into covered and uncovered operations.

[28] The Fifth Circuit adopted this test in *Jacksonville Shipyards, Inc.* v. *Perdue*, *supra*. For the reasons given in the text, we believe it erred in doing so.

Petitioners' "duties-at-the-moment-of-injury" test is inconsistent with a long line of cases emphasizing that the coverage of an employment relationship does not depend upon what the employee is doing when injured. In *Cardillo* v. *Liberty Mutual Insurance Co.*, 330 U.S. 469, an employee was killed while riding home from work in a car pool. The administrative official charged with applying the Act held that the injury arose out of and in the course of covered employment, and this Court agreed. It concluded that the interest in compensation does not depend upon the worker's activities at the moment of injury; it depends, rather, upon whether the injury arose out of job-connected risks. See also *O'Leary* v. *Brown-Pacific-Maxon, Inc.*, 340 U.S. 504 (drowning while trying to rescue swimmers at employer's recreation area is covered because a reasonable rescue attempt is part of the risks of employment); *O'Keeffe* v. *Smith, Hinchman & Grylls Associates*, 380 U.S. 359 (drowning while moving sand to form a beach is covered as part of the risks of the particular employment). These cases concern the requirement that the injury have taken place in the course of employment, but they are no less applicable to the employment status test of Section 2(3).

In any event, the "duties-at-the-moment-of-injury" test would be of no aid to petitioners. We have argued (see pages 20–39, *supra*) that all physical tasks involved in moving cargo between land and water transportation are covered by the 1972 amendments. Both Caputo and Blundo were injured while participating in the movement of cargo between ship and land

transportation, and they therefore were performing covered tasks when they were injured.[29]

[29] Petitioner I.T.O. (Br. 68–73) and the National Association of Stevedores (Br. 31–36) contend that the 1972 amendments, as interpreted by the Department of Labor, will require stevedore contractors to expend vast and unexpected sums of money. They argue that the size of this expenditure demonstrates that Congress could not have intended the interpretation of the statute adopted by the Benefits Review Board. But the committees did not project a cost for compliance with the 1972 amendments, and it therefore cannot be said that the cost of coverage is inconsistent with the expectations of Congress. Moreover, the argument about the costs of workers' compensation coverage overlooks the fact that the 1972 amendments substituted workers' compensation coverage for a system of derivative liability with which Congress was dissatisfied; an increase in the costs of workers' compensation payments therefore is offset, in part, by a decrease in other forms of liability.

Prior to the 1972 amendments, longshoremen injured on vessels could recover under the vessels' warranty of seaworthiness, without regard for the maximum recoveries provided in the Act. *Seas Shipping Co.* v. *Sieracki*, 328 U.S. 85. The vessel then could seek indemnification from the master stevedore, if the unseaworthiness had been caused by the stevedore's operations. *Ryan Stevedoring Co.* v. *Pan-Atlantic S.S. Corp.*, 350 U.S. 124. The warranty of seaworthiness was a form of strict liability (see *Crumady* v. *The J. H. Fisser*, 358 U.S. 423), so that recoveries, ultimately paid by the master stevedore, could be frequent and expensive. The 1972 amendments overturned the *Sieracki-Ryan* rule; they left the vessel liable to longshoremen only for negligence, and they provided that the vessel could not recover indemnity from the master stevedore (86 Stat. 1263, 33 U.S.C. (Supp. V) 905(b)). See generally *Gay* v. *Ocean Transport & Trading, Ltd.*, 546 F. 2d 1233 (C.A. 5). In return for surrendering the unseaworthiness remedy, longshoremen received expanded shoreside coverage at higher rates of compensation. See Gilmore and Black, *supra*, at 411; S. Rep. No. 92–1125, *supra*, at 5, 8–12.

It therefore should not be surprising that compliance with the 1972 amendments will increase the workers' compensation costs of employers. If petitioners consider the expense to be excessive, they should seek relief from Congress, not from this Court.

2. The Court should defer to the consistent administrative interpretation of the Act

The Act contains a presumption that disputed claims come within its coverage. Section 20(a), 33 U.S.C. 920(a). This Court has applied that presumption, and the associated principle that the views of the agency charged with the Act's administration are entitled to great deference,[30] in fashioning a rule that administrative decisions should be upset only on a showing of the clearest abuse. See *e.g.*, *Cardillo* v. *Liberty Mutual Insurance Co.*, *supra*, 330 U.S. at 474; *Davis* v. *Department of Labor*, *supra*, 317 U.S. at 256; *O'Keeffe* v. *Smith, Hinchman & Grylls Associates*, *supra*, 380 U.S. at 362. There has been no abuse here.

The Court also has held on numerous occasions that when a statute reasonably may be read in several ways, the agency charged with the administration of the statute may select a reasonable interpretation, and the courts will defer to its selection. See, *e.g.*, *Bayside Enterprises, Inc.* v. *National Labor Relations Board*, No. 75–1267, decided January 11, 1977, slip op. 5–7; *Steelworkers* v. *Usery*, No. 75–657, decided January 12, 1977, slip op. 8; *National Labor Relations Board* v. *Enterprise Association*, No. 75–777, decided February 22, 1977, slip op. 19–20.[31] In

[30] See *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 210; *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 433–434; *Udall* v. *Tallman*, 380 U.S. 1, 16; *Power Reactor Co.* v. *Electricians*, 367 U.S. 396, 408.

[31] See also *New York State Department of Social Services* v. *Dublino*, 413 U.S. 405, 421; *Johnson* v. *Robison*, 415 U.S. 361, 367–368.

these cases the Board has interpreted the Act in a reasonable fashion, and its decision—concurred in here by the Director, who has the responsibility for the administration of the Act—is entitled to deference.[32] There is a "reasonable legal basis" (*Cardillo* v. *Liberty Mutual Insurance Co., supra,* 330 U.S. at 379) for the award of benefits to Caputo and Blundo, and the awards therefore should be upheld.

II

EVERY PLACE WITHIN ANY WATERFRONT FACILITY SATISFIES THE MARITIME SITUS REQUIREMENT OF THE ACT

The court of appeals concluded (I.T.O. Pet. App. 30a–31a and n. 19) that Blundo and Caputo were injured within a maritime situs, as required by Section 3(a) of the Act. Petitioner in No. 76–454—but not petitioners in No. 76–444[33]—argues that this decision is incorrect.

[32] Under Department of Labor Regulations, the Board has the responsibility for applying the Act to individual cases in formal proceedings, and the Director has general superintendence over the administration of the Act and its application in the overwhelming majority of cases decided informally. See 33 U.S.C. (and Supp. V) 939; 20 C.F.R. Parts 701 and 702. Although the 1972 amendments abolished the system under which awards of deputy commissioners were reviewed initially by district courts, there is no indication in the amendments or their legislative history that the Board and the Director are entitled to less deference than the deputy commissioners. Indeed, since the 1972 amendments created a central and uniform system of administration to replace the several independent deputy commissioners, the Director and the Board should be entitled to greater deference.

[33] Petitioners in No. 76–444 explicitly concede that Caputo was injured at a situs covered by the Act. Br. 3 n. 1.

Section 3(a) provides that compensation is payable if the injury occurs "upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel)." Petitioner I.T.O. argues that the pier or terminal where Blundo was injured should be carved up, and the 19th Street end (where Blundo was injured) should be excluded from coverage, while the 21st Street end (where vessels routinely are loaded and unloaded) would be a maritime situs (Br. 64–68). This division would produce mass uncertainty, and it is not supported by either the language or the legislative history of the statute. The court of appeals held that Blundo was injured on an "adjoining pier," and that petitioner's argument to the contrary "flies in the face of the statute" (I.T.O. Pet. App. 31a n. 19).

The position of the Benefits Review Board, and of the Director, is that every place within any waterfront facility devoted primarily to maritime activities has a maritime situs for the purpose of Section 3(a). That interpretation has been upheld explicitly by one court of appeals.[34] Other courts, including the court

[34] See *Sea-Land Service, Inc.* v. *Director, supra,* 540 F. 2d at 638. Indeed, the position of the Third Circuit in *Sea-Land Service* goes beyond the position taken by the Board. In the view of that court, "[a]s long as the employment nexus (status) with maritime activity is maintained, the federal compensation remedy should be available. * * * It is the situs of the vessels in maritime commerce, not the situs of their maritime employees at the time of the injury, that in our view Congress referred to by its reference to navigable waters." See also *Dravo Corp.* v. *Maxin, supra,* 545 F. 2d at 381.

of appeals in the instant cases, have concluded that, at a minimum, every "pier" or "terminal" adjoining the water has a maritime situs, whether or not the place where the injury occurs is used to load or unload vessels.[35] Here, as with the definition of "employee" under Section 2(3), the administrative interpretation of the statute is reasonable and should be sustained.

Section 3(a) provides that the Act applies to an injury on "*any* adjoining pier * * * [or] terminal" (emphasis added). Professors Gilmore and Black concluded (*The Law of Admiralty, supra,* at 424) that " '[a]djoin' presumably means something like 'border on' or 'have direct access to' navigable waters * * *. * * * It may be assumed that the intent of the Congressional draftsman was to cover all employment-related injuries suffered by workers engaged in the specified activities. If that assumption is correct,

[35] See *Stockman* v. *John T. Clark & Son of Boston, Inc., supra,* 539 F. 2d at 271–272; *I.T.O. Corp. of Baltimore* v. *Benefits Review Board, supra,* 529 F. 2d at 1083–1084.

The Fifth Circuit has taken a different view. *Jacksonville Shipyards, Inc.* v. *Perdue, supra,* 539 F. 2d at 541–542, holds that a pier or terminal adjoining the waters has a maritime situs only if it is being used, at the time of the injury, to load, unload, repair or build a vessel. In our view, the Fifth Circuit's interpretation of the situs requirement is unjustifiably narrow, and we have filed a petition for a writ of certiorari to review it (No. 76–1166). But however that may be, *Jacksonville Shipyards* does not support petitioners here. The terminals where Blundo and Caputo were injured were used as part of the overall process of unloading vessels, and the workers were injured while taking part in that process. The Fifth Circuit upheld compensation awards to persons situated identically to Blundo and Caputo. See 539 F. 2d at 543 (Ford), 544 (Bryant).

'adjoin' should be broadly, not narrowly, construed; the essential test should be whether the injury occurred in the course of maritime employment and not on how close the situs of the injury was to the water's edge." Such a reading of Section 3(a) is necessary to eliminate "the phenomenon of shifting coverage" (*Sea-Land Service, Inc.* v. *Director,* 540 F. 2d 629, 638 (C.A. 3)), which we have discussed at pages 30–42, *supra.*

The rule for which petitioner contends would produce confusion and uncertainty by dividing a single maritime facility into many parts, some of which have a maritime situs and others of which do not; what is more, the maritime nature of a particular place might change from day to day or even time to time within a day, depending on the tasks being performed there when an injury occurred.[36] This would produce an irrational system of compensation, requiring the Board and courts to engage in complex and extensive line-drawing.

Blundo was indisputably upon a "pier" or "terminal" when he was injured; that fact alone is sufficient to establish a maritime situs. It is not necessary that the "pier" or "terminal" be used to load or unload vessels; the "loading" and "unloading" language in Section 3(a) modifies only the "other adjoining area[s]" not specifically listed by Congress as having

[36] Although petitioners have not argued that a place could gain or lose its maritime situs depending upon its use at a particular time, the Fifth Circuit so concluded in *Jacksonville Shipyards, Inc.* v. *Perdue, supra,* 539 F. 2d at 541.

a maritime situs. Section 3(a) is most sensibly read as providing that all piers or terminals adjoining the water have a maritime situs, and that any "other adjoining area" has the required situs if it is "customarily used by an employer in loading, unloading, repairing, or building a vessel."[37]

Petitioner argues that the "customarily used" language modifies "pier" and "terminal" as well as "other adjoining area," but that reading—which would ordinarily require the use of a comma between "area" and "customarily"—would make much of Section 3(a) surplusage. If petitioner were correct, the statute would read as if it provided coverage for injuries occurring on the "navigable waters (including any area customarily used by an employer in loading, unloading, repairing, or building a vessel)." Congress did not enact such a statute, however; the enumeration of places in the first part of the parenthetical expression in Section 3(a) should be given effect if at all possible, and that can be done only by reading the "customarily used" language as modifying "other adjoining area" but not the enumerated places. The court of appeals therefore correctly held (I.T.O. Pet. App. 31a n. 19) that "any pier next to the water is included within the situs definition."

But however that may be, Blundo is covered by the Act because he was injured within a "pier" or "terminal" used for the loading and unloading of vessels.

[37] See, *e.g.*, *Dravo Corp.* v. *Maxim*, *supra* (a fabrication shop some distance from a navigable river is a maritime situs because the shop customarily is used to fashion parts of ships and is part of a shipyard adjoining the water).

The terminal where he was injured was used for loading and unloading on one end and for cargo handling on the other (see pages 7–8, *supra,* and I.T.O. Pet. App. 31a n. 19). The statute, under either of the above readings, does not contemplate subdivision of a maritime facility that is both a terminal and used for the loading and unloading of vessels.

Indeed, Blundo spent approximately 20 percent of his time at that very terminal checking cargo being loaded onto and discharged from ships, and an additional amount of time checking cargo being transferred to and from lighters and barges (A. 67–69, 115–117). Moreover, Blundo was involved in cargo handling—and therefore part of the process of transfer from water to land transportation—at the very moment of his injury. He was injured at a situs specified in Section 3(a).

CONCLUSION

The judgments of the court of appeals should be affirmed.

Respectfully submitted.

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